PROPERTY: RIGHTS OF LANDOWNER IN TREES ON HIGHWAY.—In *County of Santa Barbara v. More*[1] the defendant contended that a section of the Political Code of California,[2] which forbids, under a penalty, the destruction of shade or ornamental trees upon highways, could not be construed as depriving him of the right to cut trees, unquestionably his property by virtue of his ownership of the fee of the land whereon the trees were growing. It is of interest to observe that the Supreme Court in denying the defendant's position, rested the power of the legislature to control private property upon the very slight foundation of utility found in the fact the trees "add to the comfort of the traveler and lessen the expense of road maintenance." However, the court's opinion is noteworthy in its recognition that the "aesthetic value" of a fine avenue of trees "is by no means negligible." A New York court in 1871,[3] and a New Hampshire court in 1904,[4] thought that similar statutes could apply only to persons other than the owner of the trees. Difference in time and latitude may help to explain why the Eastern courts took views so divergent from that of the California court.

It is curious to notice that while courts still profess to disregard "aesthetic values" as interests demanding protection,[5] they are nevertheless with increasing frequency giving protection to such interests in circuitous and indirect ways.[6] Thus legislation against unsightly bill boards has been sustained on the ground of public safety in the matter of fire protection. In the famous Fifth Avenue Stage Coach Case, one of the grounds of decision was that the company was acting ultra vires its charter in permitting advertising signs in its omnibuses, and hence had no standing to enjoin the enforcement of an ordinance forbidding such advertising; another ground, less fantastic, was found in the fact that the municipality's power of control over the highway justified such legislation.[7] The principal case can, of course, be rested upon the power over the highways, and it is therefore not

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[1] (April 23, 1917), 53 Cal. Dec. 529.

[2] Cal. Pol. Code, § 2742.

[3] Village of Lancaster v. Richardson (1871), 4 Lans. 136.

[4] Bigelow v. Whitcomb (1904), 72 N. H. 473, 57 Atl. 680.

[5] C. M. Bufford, The Scope and Meaning of Police Power, 4 California Law Review, 279-280. See note to Thomas Cusack Co. v. Chicago, Ann. Cas. 1916 C 488, referring to other notes in the same series.

[6] Aesthetics and the Fourteenth Amendment, 29 Harvard Law Review, 860.

[7] Fifth Avenue Coach Co. v. City of New York (1911), 221 U. S. 467, 55 L. Ed. 815, 31 Sup. Ct. Rep. 709. It is worthy of note that ordinances which limit unpleasant occupations to certain non-residential districts have been sustained without direct reference to the public health and safety. Ex parte Hadacheck (1913), 165 Cal. 416, 132 Pac. 584; Hadacheck v. Sebastian (1915), 239 U. S. 394, 60 L. Ed. 348, 36 Sup. Ct. Rep. 143. It is difficult to reconcile such cases with the dictum in Varney v. Williams (1909), 155 Cal. 318, 100 Pac. 867, 132 Am. St. Rep. 88, 21 L. R. A. (N. S.) 741, to the effect that ordinances cannot be justified merely on aesthetic grounds.

a precise authority to justify a statute seeking to impose the same limitations in respect to cutting down shade trees planted within the private property lines of the highway.

While it is probably true that no case in the United States has as yet gone quite to the extent of justifying an exercise of the regulation of private property solely in the interests of beauty, expressions are not lacking in numerous decisions recognizing that the law will ultimately take this step.[8] A great difficulty hitherto has been the want of proper administrative machinery in our law. A justice of the peace or a jury of farmers or merchants can scarcely be trusted to determine whether a structure is or is not unsightly. On the other hand, the American tradition, inherited from the days of the struggle between prerogative and common law, has been distinctly hostile to administrative boards, such as are indispensable for the proper carrying out of plans to secure beautiful surroundings. Moreover, statutes and ordinances have been too broadly expressed. For example, the Chicago ordinance which forbade advertising matter within a certain distance of public parks would have prevented an owner from placing a sale or rental notice on his house.[9] Even Berlin, which has gone beyond what any American community would endure in the matter of regulation of private property for advertising purposes, has carefully preserved the owner's or lessee's right to post or hang advertisements affecting his own interests.[10] There is little reason to doubt that when the material values inherent in more beautiful surroundings shall have been established by objective tests, such as have been used to justify the workmen's compensation, the eight hour day, and liquor legislation, the courts will be found quite ready to sustain reasonable legislation based wholly on aesthetic considerations.[11]

O. K. M.

WILLS: VALIDITY OF TYPEWRITTEN HOLOGRAPHIC INSTRUMENT. —Of the several interesting points raised recently concerning holographic wills, that in issue in *Estate of Dreyfus*[1] probes

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[8] A case which has gone far in this direction is Attorney General v. Williams (1899), 174 Mass. 476, 55 N. E. 77. See also, Wilbur Larremore, Public Aesthetics, 20 Harvard Law Review, 35; Ely, Property and Contract in their Relation to the Distribution of Wealth, ii, 783-784.

[9] Haller Sign Works v. Physical Culture Training School (1911), 249 Ill. 436, 94 N. E. 920.

[10] W. J. B. Byles, Foreign Law and the Control of Advertisements in Public Places, 7 Journal Society of Comparative Legislation (N. S.) 324-325.

[11] In addition to the authorities cited in the above notes, for recent discussions see Ernst Freund, Standards of American Legislation (1917), pp. 112-116; Henry T. Terry, The Constitutionality of Statutes Forbidding Advertising Signs on Property (1914), 24 Yale Law Journal, 1. Compare with the principal case, Altpeter v. Postal Cable Company (Feb. 17, 1917), 24 Cal. App. Dec. 274, 164 Pac. 35, with respect to property rights in trees upon highways.